



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Richards Painting Co.

File: B-232678

January 25, 1989

DIGEST

1. A late hand-carried bid may be considered where the paramount cause of the late receipt is improper action of the government and where consideration of the late bid would not compromise the integrity of the competitive procurement system.
2. In view of the government action in leaving room designated for bid acceptance unattended prior to bid opening in another room, protester's bid received 3 minutes late, just after bid opening official announced bidding was closed, may be accepted.

DECISION

Richards Painting Co., protests the rejection of its bid as being late under invitation for bids (IFB) DAKF70-88-B-0064 issued by the Department of the Army, Fort Richardson, Alaska, for exterior trim painting of family housing.

The protest is sustained.

Bid opening was scheduled for 3 p.m. on September 6, 1988. The IFB advised bidders that hand-carried bids were to be taken to the depository in room 127, building 977, Fort Richardson.

Richards states its employee arrived at building 977, 10 minutes prior to 3 p.m., but could not gain entry into the building because of a major construction project at the entrance. Richards states the doors were locked and there were no instructions for alternative access. Richards' employee had to walk around to the rear of the building to enter. Richards states that when its employee got into the building he found that the bid opening official had already left and gone to another room for bid opening. When the

044445 / 137787

Richards' employee found the bid opening official, the employee was told he was too late for the bid to be accepted. The date and time of receipt, 3:03 p.m., of the bid was noted on the bid envelope. Richards contends that it was prevented by the Army's actions from making a timely delivery.

The Army states that at 3 p.m. as determined by the clock used for all bid openings, the bid opening official shut the door to the bid opening room and announced that bidding was closed. After she made the announcement she heard a knock on the door, the Richards' employee opened the door and insisted that Richards' bid be accepted. The bid opening official noted that the clock used for bid opening indicated 3:03 p.m. At the employee's continued insistence, the bid opening official took the envelope and noted the date and time of receipt on it. The envelope was not opened.

In its comments on the Army's report, Richards contends that the bid opening official left the room for receipt of bids early to go to the bid opening room. Richards maintains its employee arrived at the depository room in time but on finding no one there the employee had to inquire in several different offices as to where the bid opening official was before he was finally directed to her. Richards states that the clock outside the conference room used for bid opening showed a few minutes before 3 p.m., but the bid opening official referred Richards' employee to a clock in an adjacent room which showed 3:03 p.m. Richards contends that the fact that the front doors were closed due to construction and that the bid opening official was not in the designated room for receipt of hand-carried bids caused Richards' bid to be received late in the bid opening room.

As a general rule, it is the responsibility of the bidder to deliver its bid to the proper place at the proper time, and the late delivery of a bid requires its rejection. Hi-Grade Logging, Inc., B-222230, June 3, 1986, 86-1 CPD ¶ 514. Our cases provide for limited exceptions to this rule. A late hand-carried bid may be considered where the paramount cause of the late receipt is improper action of the government and where consideration of the late bid would not compromise the integrity of the competitive procurement system. Manuel Tony Lucero, B-228425, Dec. 8, 1987, 87-2 CPD ¶ 566. These cases require affirmative government action that makes timely delivery of the hand-carried bid to the bid opening location impossible. Id.

Here, the bid opening room is a different room from the one designated for receipt of hand-carried bids. Accordingly, when the bid opening official announced the time as 3 p.m.,

and closed bidding in the bid opening room, she had no way of knowing if any other hand-carried bids had been delivered by 3 p.m. in room 127, specifically designated by the IFB for hand-carried bids. The Army does not dispute that the room designated for receipt of hand-carried bids was not staffed at the time Richards' employee arrived. Moreover, it evidently took the Richards' employee a certain amount of time to make inquiries as to where the bid opening official was and to be directed to the bid opening room. Therefore, the evidence in the record supports the conclusion that the bid was at the room designated for receipt of hand-carried bids prior to 3 p.m.

In view of the Army's actions in failing to staff the room designated for bid opening until 3 p.m., we find that it was improper government action which prevented Richards' employee from making a timely delivery and this was the paramount cause of the bid's late receipt. Martin G. Imboch, Inc., B-224536, Feb. 25, 1987, 87-1 CPD ¶ 215 at 3.

The decisions cited by the Army in its argument supporting rejection of Richards bid are distinguishable. In St. Charles Travel, B-226567, June 5, 1987, 87-1 CPD ¶ 575, we denied the protest of the rejection of a late bid where the base security guard who gave the protester directions to the procurement office was neither aware of the procurement nor had any capacity directly connected to the base procurement division. Moreover, we found there was no way of telling if the protester misunderstood the directions or was in fact given improper directions by the guard.

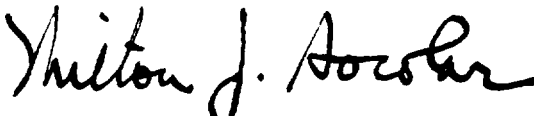
In Geiger Company, B-216502, Feb. 7, 1985, 85-1 CPD ¶ 155, the protester was given specific correct instructions by the solicitation as to where bids were to be hand-carried but he forgot the room number on arrival at the procurement division so he asked a summer employee where he should go. He was misdirected and arrived late. Again, in Alden Electronics, B-227940, Sept. 21, 1987, 87-2 CPD ¶ 287, the proposal delivery instructions were correct and unambiguous and the government did not change the address or prevent access to a protester who was late because he claimed the vehicular access to the building was more time consuming than pedestrian access.

Here, the bid opening official could not possibly have been in the room designated to receive bids at the same time that she declared bidding closed in another room. This situation, where the bid opening room was not attended up to the

time for bid opening, differs from the situations in the above cited decisions where the government either took no improper actions or where the protesters themselves forgot their destination or failed to plan for normal delivery.

In view of the above, we sustain Richards' protest and recommend the Army consider Richards' bid. In addition, Richards is entitled to the costs of filing and pursuing the protest. 4 C.F.R. § 21.6(d)(1) (1988).

The protest is sustained.

for 
Comptroller General
of the United States